

In the United States patent and Trademark Office

William E. McLaughlin

10/015,798 filed 011/02/01 [continuation of 09/235,618 of 01/21/99]

Preliminary Examination Group

Southampton, PA 18966-4545

March 14, 2002

Commissioner of Patents, Washington, DC 20231 VIA FAX

To 703-305-9822 and with MAIL CONFIRMATION [Cert. of Mail 03/14/02]

Box INITIAL EXAMINATION DIVISION, Attn: Delora Dillard

Friends:

Supplemental Declaration of Absence of New Matter:

On Jan. 16, 2002, a Formalities Letter was sent requesting a replacement specification by reason of the damage [anthrax processing] to the adequate application filed Nov. 2, 2001. Each of these applications has been a photocopy of the pending allowed parent application, so that applicant is believed to have fulfilled his primary duty of providing to the Patent Office an adequate application, as indicated by the allowance of the parent [issue fee pd 11-2-01]. Counsel has been seeking confirmation, and now asks for prompt FAX confirmation [to meet March 16, 2002 deadline] that the application filed March 2 meets present standards concerning suitability for making photocopies [prompting Jan. 16. Requirement]. This supplemental Declaration also confirms that the application submitted March 2, 2002 was a true copy of the parent application and the application filed Nov. 2, 2001, **AND THAT THERE IS NO NEW MATTER.** A true photocopy of a parent application inherently contains no new matter, but the "magic words" of "no new matter" might have been omitted from previous true copy statements.

Respectfully submitted,

John R. Ewbank, Reg. #14,853

Voice 215-357-3977 Fax 216-322-2673



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FAX ACKNOWLEDGMENT OF RECEIPT OF ACCEPTABLE DOCUMENTS

Counsel is providing this form which the Office of Initial Examination can use to notify counsel that there has been satisfactory compliance with the requirements of the January 16, 2002 FORMALITIES LETTER in the application of William E. McLaughlin, 10/015,798 filed 11/02/01 as a continuation [potential division] of 09/235.618 of 01/21/99.

This Confirmation should be FAXed to

215-322-2673



#3

In the United States Patent and Trademark Office
Southampton, PA 18966-4545

November 2, 2001 [note that filing was attempted on August 9, 2001 by FAXing to 703-746-4256]

McLAUGHLIN APPLICATION FOR APPARATUS CLAIMS

Assistant Commissioner of Patents,
Box Patent Applications-
Washington, DC 20231

Sir:

**WHY THIS APPLICATION MERITS EXPEDITED PROSECUTION AS IF IT WERE
UNAMBIGUOUSLY ENTITLED FROM THE FIRST TO BE CALLED A
DIVISIONAL APPLICATION**

This application has a specification identical to that of a pending application now in the Publications group because of a Notice of Allowability issued September 7, 2001. Such allowed pending application has method claims and is a CPA application filed July 6, 2001 derived from parent application 09/235,6198, filed 01/21/99. Dr. Sean Smith was the Examiner throughout the prosecution. He is in Group 3729, headed by Lee Young. The applicant and inventorship herein are identical to such parent and CPA cases. The claims which are effectively sought herein are identical to the apparatus claims which previously were sought in the CPA application. When the parent case was filed, it included both method claims and apparatus claims. Such original apparatus claims are resubmitted [to maximize similarity to parent case as filed] but are cancelled by a Preliminary Amendment substituting the apparatus claims that were in the CPA case when capitulating to the Examiner's erroneous requirement for cancellation of the apparatus claims. .

Counsel cannot quote a class and subclass for the presently sought claims because Examiner Smith never make a conventional restriction requirement.

When the case was filed on Jan. 21, 1999, there were both method and apparatus claims. In each of four amendments, applicant argued for the allowability of both method and apparatus claims, never making any election between them. The Examiner did not then raise any issue about restriction. Then in the Final Rejection, Examiner Smith quite erroneously asserted that method claims had

McLAUGHLIN Divisional Apparatus Application of 11/02/01 benefiting from 01/21/99

been elected, and required the cancellation of the apparatus claims in order to expedite a Notice of Allowability of the method claims. The restriction requirement was a baffling surprise feature in a Final Rejection. Legal authorities were cited in attacking the restriction requirement, but Examiner Smith repeated it in the response to the After Final amendment. It seemed wiser strategy to pay an extra filing and issue fee than to use appellate procedures involving delays, lawyer's time, etc. to try to overcome the hurdles arising from this baffling surprise. The client desired early issuance of a patent.

Because the present application benefits from the 01/21/99 filing date, it is tentatively designated as a **CONTINUATION APPLICATION**, even though it will probably be treated essentially as a **DIVISIONAL APPLICATION** after the issuance of the filing receipt with its class-sub-class Group designations. This case should be processed with great speed.

The documents for the application containing the apparatus claims were predominantly prepared in response to a telephone conversation with Examiner Sean Smith on Wednesday Aug. 9, 2001. The Examiner seemed adamant that if both method and apparatus claims were desired, it would be necessary to file a separate case for the apparatus claims, which he indicated could be done following the CPA procedure of FAXing the application to his new private FAS number 703-746-4256. Accordingly, Counsel filed what was intended to be this application by FAX on Aug. 9, 2001. Counsel did not send a form requesting a FAX reply because of Counsel's unawareness of the availability of the FAX-reply form. It was subsequent to Aug. 9, while browsing through the availability of Forms on line that Counsel discovered that there is a reply form for COA applications filed by FAX. Counsel is 85 years old, and has had as many as 9 patent applications pending, but is quasi-retired, and accordingly relies more upon guidance from the Examiner than some patent attorneys having a more active prosecution practice.

Counsel did phone Examiner Smith a few days after the FAXing and had oral confirmation that the FAX had been received and that the case was on file. Said FAX transmittal included the documents for paying the fee from the Deposit Account. When the filing fee was not routinely deducted from the Deposit Account, Counsel made a series of Status Inquiries, including leaving messages on the VoiceMail of Examiner Smith several times, inquiries at the Initial Examination

McLaughlin Apparatus Application of 11/2/01 benefiting from 01/21/99

section, and the like, every few weeks. Counsel's persistent inquiries to the Patent Office brought on Thursday, September 25 the surprising news that currently the Patent Office does not accept the filing of a Divisional Application by FAX. Such surprising news prompted counsel to communicate with the office of his Arlington, VA associate, Eric Scherlin. A week later, on Thursday, November 1, said office phoned to explain that efforts to obtain access to the CPA of 09/235,618 had been unsuccessful, so that the apparatus application could not easily contain documentary evidence concerning the filing by FAX on Aug. 9, 2001. Preparations for filing this application started immediately, but could not be completed until Friday, November 2, 2001.

Although the two patents will expire simultaneously under the 20 year term statute, counsel tried valiantly to seek simultaneous issue of the two patents. Prior to the 20 year term statutes, many courts were quite confused about "double patenting" as clarified in Stringham's book on Double Patenting. From 1937 onward, counsel particularly stressed the books about patent law by Stringham. However, today Stringham is almost unknown to many patent professionals. Stringham had respect for many court decisions concerning some aspects of intellectual property law, but contempt for the amazing confusion about double-patenting. Some of those asinine decisions have never been explicitly overruled. Some of the double patenting decisions contain language connoting that the Patent Office cannot be accused of error and that only counsel for applicant can be blamed if any mistakes were made. The Stringham book on double patenting encouraged efforts to seek both simultaneous expiration and simultaneous issue to avoid raising double patenting issues. Modern decisions probably acknowledge that mere simultaneous expiration avoids all double patenting problems. The prosecution record establishes the intent to avoid any double patenting problem, including the effectiveness of counsel's commitment to perennial common ownership of the differently numbered patents. The record also clarifies that counsel became a part-owner of such patent property during the prosecution, and is a shareholder in the common assignee, a corporation having essentially no assets except such patent property.

Substantially all patentability issues have been decided because the method claims, throughout the prosecution, had apparatus limitations, and the apparatus claims feature method limitations. Now that Examiner Smith has made it necessary to deal with two patent applications

McLaughlin Apparatus Application of 11/02/01 benefiting from 01/21/99

instead of one, there is hope that the Patent Office can make an adequate search for the apparatus claims, but also recognize why there appears to be an appropriate basis for a First Action Notice of Allowability for the apparatus claims. The Examiner handling this case, after making a supplemental search, can essentially use Dr. Smith's statement as the reason for allowability. Counsel seeks a prompt and favorable action.

A signature page is at the end of this submission.

-d--



#3

In the United States Patent and Trademark Office

William L. McLaughlin

Quasi-Division of pending CPA filed July 5, 2001 continuing 09/235,618 of 01/21/99

Parent Application was in Group 3729

S. Smith Examiner; Superv.Ex. Lee Young

Allowed Sept. 7, 2001. Iss Fee due Dec. 7, 2001

Publications Group

STATEMENT CONCERNING TRUE COPY, ETC.

The specification and drawings submitted herewith for use as an application benefiting from the 01/21/99 filing date of the parent application are photocopies and true copies of the allowed CPA case. The three claims 1-3 submitted herewith are true copies of claims 3, 4, and 5 in the parent case as filed 01/21/99, but are merely of historical interest. A Preliminary Amendment [resembling CPA practice, as seems appropriate in this type of compulsory divisional case] substitutes the apparatus claims as they were pending in the CPA case at the time of the Examiner's erroneous requirement for their deletion.

Both apparatus and method claims were initially sought. Both were argued for in each of the amendments filed in response to the first four rejections. It was only in the fourth [Final] rejection that the Examiner raised any issue about the presence of both apparatus and method claims. Counsel cited law and arguments in contending that both claims should issue in the same case. When the Examiner repeated such requirement in the post-final rejection, counsel interpreted it as a compulsory restriction, leading to this application. Counsel cannot note what an Examiner has designated as the class and sub-class of the presently sought claims, because the Examiner never made such a designation, but made a false accusation that applicant had elected method claims when the record shows that applicant consistently sought both method and apparatus claims. Prompt examination and allowance of the claims are earnestly solicited.

John R. Ewbanks

John R. Ewbanks Reg. No. 14,853

John R. Ewbanks 03/02/02

Voice 215-357-3977 FAX 215-322-2673 e-mail hurl@libertynet.org



McLAUGHLIN Apparatus Application of 11/02/01 benefiting from 01/21/99

Signature page

Prompt issuance of a Notice of Allowance is earnestly solicited.

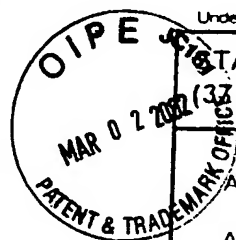
Respectfully,

John R Ewbank

John R. Ewbank, Registration Number 14,853

Voice 215-357-3977 FAX 215-322-2673 e-mail hurd@libertynet.org

John R Ewbank
3-2-02

STATEMENT CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) & 1.27(b))—INDEPENDENT INVENTORDocket Number (Optional)
99-1Applicant, Patentee, or Identifier: William F. McLaughlin

Application or Patent No.: _____

Filed or Issued: _____

Title: Infra-red laser device and method for searching for lost item

As a below named inventor, I hereby state that I qualify as an independent inventor as defined in 37 CFR 1.9(c) for purposes of paying reduced fees to the Patent and Trademark Office described in:

- ☒ the specification filed herewith with title as listed above.
☐ the application identified above.
☐ the patent identified above.

I have not assigned, granted, conveyed, or licensed, and am under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern, or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below:

- ☒ No such person, concern, or organization exists.
☐ Each such person, concern, or organization is listed below.

Separate statements are required from each named person, concern, or organization having rights to the invention stating their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

William F. McLaughlin
NAME OF INVENTOR

NAME OF INVENTOR

NAME OF INVENTOR

William F. McLaughlin
Signature of inventor

Signature of inventor

Signature of inventor

Jan 21, 1999
Date

Date

Date

Please type a plus sign (+) inside the box → ☐

PTO/SB/05 (12/97)
Approved for use through 09/30/00. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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UTILITY PATENT APPLICATION TRANSMITTAL

Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.	01-4	Total Pages	
First Named Inventor or Application Identifier			
McLaughlin			
Express Mail Label No.	EK455248861US		

APPLICATION ELEMENTS
See MPEP chapter 600 concerning utility patent application contents.

ADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, DC 20231

1. ☒ Fee Transmittal Form
(Submit an original, and a duplicate for fee processing)
2. ☒ Specification (Total Pages)
(preferred arrangement set forth below)
 - Descriptive title of the Invention
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Reference to Microfiche Appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
3. ☒ Drawing(s) (35 USC 113) (Total Sheets)
4. ☐ Oath or Declaration (Total Pages)
 - a. ☐ Newly executed (original or copy)
 - b. ☒ Copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 17 completed)
(Note Box 5 below)
 1. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting
inventor(s) named in the prior application,
see 37 CFR 1.63(d)(2) and 1.33(b).
5. ☐ Incorporation By Reference (useable if Box 4b is checked)
The entire disclosure of the prior application, from which a
copy of the oath or declaration is supplied under Box 4b,
is considered as being part of the disclosure of the
accompanying application and is hereby incorporated by
reference therein.

6. ☐ Microfiche Computer Program (Appendix)
7. Nucleotide and/or Amino Acid Sequence Submission
(if applicable, all necessary)
 - a. ☐ Computer Readable Copy
 - b. ☐ Paper Copy (identical to computer copy)
 - c. ☐ Statement verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

8. ☐ Assignment Papers (cover sheet & document(s))
9. ☐ 37 CFR 3.73(b) Statement (where there is an assignee) ☒ Power of Attorney
10. ☐ English Translation Document (if applicable)
11. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
12. ☒ Preliminary Amendment
13. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
14. ☐ Small Entity Statement(s) ☒ Statement filed in prior application. Status still proper and desired
15. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
16. ☐ Other: Classifications
about computer program
but Examiner did not give subclass

17. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information:
- | | | | |
|--|--|---|--|
| <input checked="" type="checkbox"/> Continuation | <input checked="" type="checkbox"/> Divisional | <input type="checkbox"/> Continuation-in-part (CIP) | of prior application No. <u>09/2 35618</u> |
|--|--|---|--|

18. CORRESPONDENCE ADDRESS

☐ Customer Number or Bar Code Label



or ☐ Correspondence address below

NAME	26788			
ADDRESS	John R Eubank			
CITY	STATE	ZIP CODE		
COUNTRY	TELEPHONE	FAX		
	215-357-3977	215-322-2673		

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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision

TOTAL AMOUNT OF PAYMENT

(\$) 370⁰⁰

Complete if Known

Application Number

Filing Date

First Named Inventor

Examiner Name

Group Art Unit

Attorney Docket No.

Nov 2, 2001
McLaughlin

01-4

METHOD OF PAYMENT

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit
Account
Number

50-1224

Deposit
Account
Name

John R Ewbank

☐ Charge Any Additional Fee Required
(Under 37 CFR 1.16 and 1.17)

☐ Applicant claims small entity status.
See 37 CFR 1.27

2. ☐ Payment Enclosed:

☐ Check ☐ Credit card ☐ Money
Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Small Entity

Fee Fee Fee Fee Fee Description
Code (\$) Code (\$)

101 740 201 370 Utility filing fee

106 330 206 185 Design filing fee

107 510 207 255 Plant filing fee

108 740 208 370 Reissue filing fee

114 160 214 80 Provisional filing fee

Fee Paid

SUBTOTAL (1) (\$) 370⁰⁰

2. EXTRA CLAIM FEES

Total Claims 20 = X =
Independent Claims 3 = X =
Multiple Dependent =

Large Entity Small Entity

Fee Fee Fee Fee
Code (\$) Code (\$)

103 18 203 9 Claims in excess of 20

102 84 202 42 Independent claims in excess of 3

104 280 204 140 Multiple dependent claim, if not paid

109 84 209 42 ** Reissue independent claims
over original patent

110 18 210 9 ** Reissue claims in excess of 20
and over original patent

SUBTOTAL (2) (\$)

*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Small Entity Fee Code	Fee Code	Fee Code	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920	112	920	Requesting publication of SIR prior to Examiner action	
113	1,840	113	1,840	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt.	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	
Other fee (specify)					

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

SUBMITTED BY

Name (Print/Type)

JOHN R EW BANK

Registration No.
(Attorney/Agent)

14853

Complete (if applicable)

Telephone

215-357-3977

Signature

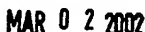
John R Ewbank

Date

Nov 2, 2001

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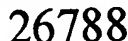
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John R Eubank

FOR OFFICE USE ONLY

ACCOUNT NUMBER

50-1724

YOUR ORDER NUMBER

DESCRIPTION OF ARTICLES OR SERVICE TO BE FURNISHED

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only one liability apply of 11/02/01

\$ 370⁰⁰

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03-04-02
John R. Ewbank

65 years 1937-02 as patent attorney

1150 Woods Road, Southampton, PA 18955-4545

Voice 215-357-3977 FAX 215-322-2673 hmr1@libertynet.org

Website: <http://www.dffcs.org>

March 2, 2002

Assistant Commissioner for Patents
Attn: Ms. Delora Dillard
Office of Initial Examination

Handwritten notes and stamps: "03-04-02", "2015013", "094", and a signature.

Re: Replacement application documents, Ser. No. 10/015,798 of 11/02/01

This communication is in response to your FAX communication of February 7, 2002, transmitting the standard FORMALITIES LETTER dated January 16, 2002. However, the identical Formalities letter had been mailed to me, together with a restricted filing receipt on January 16, 2002. One of my responses to such Formalities Letter mailed January 16, 2002 had been my FAXing the application to the Office of Initial Examination a copy of such application, as indicated by the enclosed letter of February 3, 2002. Although I might have also sent by regular first class mail a confirmation copy of such FAXed application, my files do not include a copy of a Certificate of Mailing of such confirmation copy of February 3, 2002. Hence, I am sending this communication by Certified Mail so that I will have adequate proof of having mailed it comfortably prior to the March 16, 2002 deadline. This Express Mail copy was postponed partly because of the hope and expectancy for the postcard receipt from such Feb. 3, 2002 mailing of the confirmation of the FAXed copy.

It is my understanding that the Patent Office now imposes high standards on the ease of the Patent Office in making photocopies of a patent application. On November 2, 2001 I used the last top quality photocopy of the application, never imagining that I would need a top quality photocopy again. The copy sent by FAX and mail on Feb. 3 might not have met current standards. Much time was devoted to seeking the best data for the presently submitted copy. Counsel employed a commercial photocopy machine three miles from his office in an effort to obtain the best copy possible. The presently submitted copy is believed to be adequate. If it were not, then it would be much easier for Counsel to arrange for the Patent Office to prepare photocopies of the drawings in the parent case Ser. No. 09/235,618 of 01/21/99 than to start from scratch in preparing a replacement set of drawings. Because the problems arise primarily because of the ANTRAX processing, the Patent Office has a weak case for arguing that applicant has not complied with the filing requirements when the Patent Office has consistently had in its records a set of acceptable drawings. Said parent case had acceptable drawings and specification as evidenced by the issuance of the Notice of Allowance on September 7, 2001, and

TECHNOLOGY CENTER R3700

RECEIVED

AUG 13 2002

03-04-02 2015013 094

THE **WORLD'S** **GREATEST** **LIBRARY**

Counsel is also offering a contingent Petition for Extension of Time for the compliance with such FORMALITIES LETTER of January 16, 2002.

John R Ewbank
John R. Ewbank Reg.# 14852

e-mail hmrl@libertynet.org